

# **EXHIBIT 1**

Amelia Huffman  
7/31/2012

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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Case No. 11-CV-03071(SRN/JJK)

Larry E. Smith, as trustee for  
the Heirs and Next of Kin of  
David Cornelius Smith,

Plaintiff,  
vs.

Timothy Gorman and Timothy Callahan,  
acting in their individual capacities  
as Minneapolis police officers,  
and The City of Minneapolis,

Defendants.  
-----

VIDEOTAPED DEPOSITION TRANSCRIPT OF

AMELIA HUFFMAN

July 31, 2012

9:07 A.M.

at

Gaskins, Bennett, Birrell, Schupp, LLP  
333 South 7th Street  
Suite 2900  
Minneapolis, MN 55402

Court Reporter: Janet D. Winberg, RPR  
Videographer: Jayme Hogan, Envision

Amelia Huffman

7/31/2012

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NOTE:	The original transcript will be delivered to the noticing party, Gaskins, Bennett, Birrell & Schupp.	
NOTE:	Exhibit 92 was marked.	
PROCEEDINGS		
VIDEOGRAPHER:	This is the video deposition of Amelia Huffman.	
The date is July 31, 2012.		
The time is 9:07 A.M.		
Would each attorney please state his or her name for the record?		
MR. STORMS: Jeff Storms, Robert Bennett and Kathryn Bennett, on behalf of the plaintiff.		
MS. FUNDINGSLAND: Lynne Fundingsland, on behalf of the defendants.		
VIDEOGRAPHER: Thank you.		
Would the court reporter please administer the oath?		
* * *		
(Witness sworn.)		
AMELIA HUFFMAN,		
called as a witness, being first duly sworn,		
was examined and testified as follows:		
* * *		
EXAMINATION		
BY MR. STORMS:		
Q. Please state and spell your name for the record.		
A. Amelia Huffman. A-M-E-L-I-A H-U-F-F, like		
Frank, M-A-N.		
Q. And how old are you?		
A. I'm 40.		
Q. And you understand that you're testifying under oath today?		
A. I do.		
Q. What documents did you review in preparation for your deposition?		
A. The CAPRS Report from the police computer system and the VisiNet Call Details.		
Q. And by the CAPRS Report, did you also read all the supplements attached to the CAPRS Report?		
A. Yes, I did.		
Q. And you did not actually create a supplement yourself in this case?		
A. Correct.		
Q. Okay. And why was it that you did not create a supplement in this case?		
A. I wasn't an -- an investigator on the case, nor did I go to the scene so I didn't have any firsthand details to add to the CAPRS in the form of a supplement.		
Q. Have you ever reviewed any of the videos related to this case?		
A. I have at the time of the incident, but it's		
been several years since I've seen them.		
Q. Do you recall which videos you reviewed related to the incident?		
A. I have seen the video from the pen cam and I have seen the video from the Y.		
I do not recall if I've seen the Taser video. I don't think so.		
Q. And were these videos that you observed shortly after the incident itself?		
A. Yes.		
Q. And any time between now and the first time you viewed those videos have you viewed them again?		
A. No, I have not.		
Q. Okay. What was your purpose for viewing the videos initially?		
A. In my role as the commander of criminal investigations I received briefings from the investigators and during those briefings I viewed the videos.		
Q. I want to briefly talk about your background. My understanding is that you graduated from Smith College?		
A. I did.		
Q. And what year did you join the MPD?		
A. 1994.		

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1	Q. And when did you receive a promotion to 2 sergeant?	1	the homicide commander to determine whether an 2 investigation is complete. You know, because 3 the -- the user of that investigation really is 4 the prosecutor's office, we're deferring greatly 5 to their judgment.
3	A. 1999.	6	Q. They would expect that you would have the 7 experience... 8 It would be expected that you have the 9 experience and training necessary, though, to 10 provide input with respect to whether or not an 11 investigation is complete?
4	Q. And when were you promoted after your sergeant 5 promotion?	12	A. Yes, that's correct.
6	A. I was promoted to lieutenant... Ah, let's see. 7 In 2005 perhaps. I'd have to go look to be 8 sure. 9 And then I took over my position as captain 10 in criminal investigations in July of 2008.	13	Q. Or other investigative tasks should be 14 performed?
11	Q. In 2005, when you were a lieutenant were you -- 12 which precinct were you assigned to?	15	A. Yes.
13	A. First I was assigned to the 5th Precinct in 14 Southwest Minneapolis. And then I was assigned 15 as the public information officer for the 16 department.	16	Q. And it's your job to reach those decisions from 17 the police perspective as opposed to the 18 prosecuting perspective?
17	Q. And what was your role as the public information 18 officer?	19	A. Yes. Although again, you know, we don't do that 20 in a vacuum. We collaborate extensively with 21 the prosecutor's office in reviewing cases. You 22 know, that's a critical partnership for us.
19	A. To give public information to the media and 20 other sources who were inquiring.	23	Q. And there were times where I take it as the head 24 of homicide that you had investigations that 25 appeared incomplete and you'd asked your
21	Q. You would conduct press briefings?		
22	A. Correct.		
23	Q. Okay. And you remained in... Was that the -- 24 the second role you held as a lieutenant then?		
25	A. Yes. And then the third role I held as a		
	7		9
1	lieutenant for the last year was as the 2 commander of homicide.	1	investigators to go back and obtain additional 2 information?
3	Q. And in 2007 you were promoted to commander of 4 homicide?	3	A. In collaboration with the prosecutor's office?
5	A. Yes.	4	Q. Independently or in collaboration.
6	Q. Okay. As commander of homicide what did your 7 duties entail?	5	A. Yes, absolutely there are times when the 6 prosecutor's office asks for additional 7 information in every kind of case. Or asks to 8 -- the investigators to pursue something to see 9 whether a certain kind of information could be 10 obtained.
8	A. Overseeing the work of the homicide 9 investigators. Coordinating the work of the 10 unit. Managing the schedule. Assigning cases. 11 The general administration and management of the 12 unit.	11	Q. And were there times when you personally, 12 outside of the prosecution, would -- would see 13 information that you thought should be obtained 14 in connection with an investigation and 15 instructed your investigators to obtain that 16 information?
13	Q. Would the results of every homicide 14 investigation ultimately end up on your desk?	17	A. Sure. Absolutely. I have conversations even 18 now in my current role with investigators 19 discussing cases and, you know, saying, "What 20 about this avenue? Have we tried this avenue?" 21 You know, "Could we bring this person in?" 22 You know, certainly the commander of 23 homicide and the commander of criminal 24 investigations have those kind of conversations 25 with investigators routinely.
15	A. Yes. I would have been receiving briefings from 16 the investigators and have reviewed documents 17 and reports for every homicide investigation.		
18	Q. And in that role was it your duty to conclude 19 whether or not a homicide investigation had been 20 adequately performed?		
21	A. Well, ultimately it's really the judgment of the 22 prosecutor's office to determine whether there's 23 additional evidence or investigation they would 24 like to see pursued before charging a case. 25 So, you know, it's not solely the role of		

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1 Q.	And in order to -- to lead homicide in the fashion that you did, you necessarily have to have an understanding of -- of the laws that apply to homicide?	1 Q.	Is that something you've done in the past?	
2 A.	Yes.	2 A.	I'm trying to think of a specific case where Internal Affairs wasn't already working on it. Their process starts at the same time that the homicide investigation starts, so it's not as if they're waiting for us to say there was a policy violation to jump-start their investigation.	
3 Q.	The laws that apply to evidence collection?	3	So they're routinely working on those things right from the beginning, at the same time that homicide is.	
4 A.	Yes.	4 Q.	Well, and if you have an officer-involved shooting, or something to that extent, when you're looking at the propriety of the officer's conduct from a homicide perspective, you might look to policy for guidance on whether or not that conduct was appropriate?	
5 Q.	You want to make sure that your officers are acting within their constitutional parameters in terms of collecting evidence?	5 A.	Yes. I mean certainly we have policies that are reflective of the law, but generally what we're looking for in the criminal investigation, what our investigators are focusing on from homicide's perspective is pulling together all the evidence for the county attorney's office to review and to present to the grand jury if they should so choose.	
6 A.	Correct.	6 Q.	So policy questions, you know, "Was the	
7 Q.	And then you have situations, I take it then, where there were officer-involved homicides that you oversaw?	7		
8 A.	Correct.	8		
9 Q.	Because Minneapolis does handle all its own officer-involved homicides?	9		
10 A.	Yes, we do.	10		
11 Q.	And in order to necessarily evaluate those incidents, officer-involved homicides, you'd have to have an understanding of what the proper constructs are of officer conduct?	11		
12 A.	Yes.	12		
13 Q.	You have to have an understanding of how officers can appropriately behave under the	13		
		11		
1 Q.	4th Amendment?	1 Q.	officer, you know, carrying all of their equipment appropriately..."	
2 A.	Yes.	2	You know, "Did the use of force, the non-criminal questions of use of force meet policy and training?" Those things are handled during the administrative review.	
3 Q.	And you have to have an understanding of what MPD policy is and whether or not your officers are operating within those policies?	3	In this case there was an administrative review. I wasn't involved in that. The homicide investigators were not involved in that other than pulling together the information, some of which would have been used in that administrative review.	
4 A.	Yes, although policy questions are handled separately from the criminal issue.	4	And I haven't seen the results of that, so I can't speak to anything that would have been part of that administrative review.	
5 So for in every -- for every-officer involved critical incident, you know, a shooting or other use of force that results in some kind of serious injury or death, there are two parallel processes that go on.	5	Q.	And by "administrative review" were you referring to the force review that was ultimately done through Internal Affairs?	
6 And policy questions are handled in an administrative review and that's done separately.	6	A.	Correct.	
7 So the homicide investigators provide information that ultimately goes to that investigation. The information doesn't come back the other way. Those two processes aren't intertwined.	7	Q.	Now one of the things that you would observe naturally as part of leading homicide investigations would be whether or not other related crimes might have occurred?	
8 Q.	If you see a policy violation, as the head of homicide, you obviously have the ability to point that out to Internal Affairs investigators?	8	A.	Yes.
9 A.	Yes, certainly, if we see a policy violation.	9	Q.	For example, if you saw that someone was hiding

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1        evidence related to that homicide, that's 2        something you would observe and probably point 3        out to a prosecutor?		1        A. Yes. 2        Q. Okay. And those are the types of issues that 3        any -- in the course of conducting any good 4        homicide investigation you would necessarily 5        evaluate those issues, as well?	
4        A. Yes. Although I doubt the prosecutors would 5        need me to point that out.		6        A. Certainly. If those issues came up that would 7        be something the prosecutor's office would be 8        aware of and, you know, could choose to take 9        action on.	
6        Q. Because it would be so obvious?		10      Q. Well, and MPD -- the MPD Homicide Department 11     could pursue that investigation on their own, as 12     well?	
7        A. Yes.		13      A. Yes. But in terms of actually making a decision 14     whether or not to pursue some kind of charging, 15     that decision is made by the prosecutor's 16     office.	
8        Q. Okay. And if you believed as the head of 9        homicide that someone was hiding evidence from 10      your investigators you might work with your 11      investigators to take steps to go ahead and 12      obtain that evidence?		17      Q. As the MPD Homicide Unit... 18      Does the MPD Homicide Unit make 19      recommendations at all to the Hennepin 20      County Attorney's Office?	
13      A. Yes.		21      A. Sure.	
14      Q. You might obtain a search warrant, for example?		22      Q. Okay. So if you conduct a homicide 23      investigation you -- at the end of that 24      investigation you might say, you know, "This 25      person we believe should be charged for some	
15      Q. And if someone doesn't -- does hide evidence 2        from investigators it's clear that that's 3        obstruction of justice typically, isn't it?	15	1        degree of murder and also obstruction of 2        justice"?	17
4        A. If someone were hiding, yes. Although I mean in 5        general in homicide cases I have not seen... 6        In fact, I don't think I've seen any cases 7        where we've had additional charges related to a 8        homicide that were specifically for hiding some 9        kind of piece of evidence.		3        A. Yes. Although, like I said before, I haven't 4        seen cases that are charged out in the way that 5        you're suggesting, so I don't think that that's 6        something that we would be recommending because 7        it's not typically what's done here in 8        Hennepin County. 9        I mean certainly we have made 10      recommendations, you know, or have asked the 11      county attorney's office to review cases where 12      someone is ultimately charged as an accessory, 13      but it's not under the circumstances that you're 14      suggesting.	
10      You know, we do sometimes see people who are 11      charged as an accessory after the fact for, you 12      know, helping someone escape the scene, or to 13      flee the jurisdiction, something like that. 14      But I don't recall any cases where I've seen 15      our prosecutor's office charge someone for 16      knowing that the suspect dumped bloody clothes 17      in a garbage can and not telling investigators 18      when they were questioned, for example.		15      Q. And so the circumstances I'm suggesting... It's 16      not that those couldn't be true, it's just 17      something you haven't actually encountered?	
19      Q. That certainly could be obstruction of justice?		18      A. Correct.	
20      A. It certainly could be, but I have not actually 21      seen that charged.		19      Q. Okay. Now did you remain in -- ahead of 20      homicide from 2007 to 2008; is that right?	
22      Q. And if I aided someone in doing that, in hiding 23      the evidence, that's a situation where I could 24      potentially be criminally liable for accessory 25      after the fact?		21      A. Yes. In July of 2008 is when I took over my 22      current position.	
		23      Q. Okay. And what position is that?	
		24      A. It's the captain/commander of Criminal 25      Investigations Division.	

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	18		20
1	Q. And is that based out of one of the precincts?	1	Q. And where were you at the time?
2	A. No. It's based out of city hall.	2	A. In Room 108, which is in city hall. It's the main criminal investigations section.
3	Q. And what are your duties as the commander of investigations?	3	Q. Is that where you... What was your purpose for being in Room 108 at that time?
4	A. So I supervise the lieutenants who supervise the investigative units.	4	A. My office is there.
5	So looking at the overall coordination of our investigative resources.	5	Q. Okay. So does Room 108 -- Room 108 house several offices?
6	Making decisions about staffing.	6	A. It does. It houses the bulk of investigations, not the entirety, but homicide, assault, robbery, some of sex crimes, domestic assault and child abuse are there. And then there are some additional office spaces that house other investigators.
7	Helping to plan training.	7	Q. So Room 108, that's where Lieutenant Zimmerman is also based?
8	We work closely with the county attorney's office to do yearly training for all investigators.	8	A. Yes.
9	Looking at overall resources, training that's needed from outside, other resources that are needed from outside. Those kind of administrative and management things.	9	Q. Okay. So it's not really just one room, it's many rooms?
10	Q. And what units do you supervise?	10	A. Yeah, it's a -- it's a long L-shaped corridor with lots of cubicles and offices.
11	A. Let's see. Homicide. Assaults. Robbery. Sex Crimes. Domestic Assault. Child Abuse. And the Safe Streets Task Force.	11	Q. After receiving the text message do you recall what the next steps were that you took?
12	I also have the civilian portions of the department in records transcription and property and evidence.	12	A. Well, at that point the investigators, you know, left to go out to the scene and collect
13	Q. And incidents defined by the...	13	
14		19	
15	Investigations defined by the MPD as critical incident investigations, do those fall within the work of homicide?	16	information.
16	A. They do.	17	So at that point all I was doing was waiting for the investigators and the folks, the precinct officers who were assigned it, to that particular call, to do their tasks.
17	Q. And that was how you came to be involved with the David Smith case?	18	So I wasn't doing anything more than waiting for that information to start coming back as a part of the investigation.
18	A. Correct.	19	Q. It's Lieutenant Zimmerman that takes the role in terms of delegating those tasks; is that right?
19	Q. It was in your role as supervising -- was it Lieutenant Zimmerman at the time?	20	A. Correct. He's the direct commander of homicide, so in terms of assigning resources there's an investigative team who is on call during any given period of time. And so they would be the ones who would be first up to -- to respond and catch that case. And then he would assign additional resources, as needed.
20	A. Yes.	21	Q. And so you're not making any -- or giving any direct orders at that point in time?
21	Q. Okay. How was it that you came to learn about the David Smith incident?	22	A. Correct.
22	A. So whenever there is a critical incident there's a notification system and so the lieutenant of homicide, the commander of criminal investigations are on the list of people who are automatically notified in that kind of circumstance.	23	Q. Are you giving any direct orders -- when you find out about this did you give Lieutenant Zimmerman any orders?
23	So in this particular case I was notified as a matter of course.	24	A. No.
24	Q. You got the text message?	25	Q. Okay. So he's operating pretty autonomously at
25	A. Yeah.		
	Q. Okay. Were you on duty at the time you received the text message?		
	A. I was.		

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	22		24
1       that point?		1       sources of information as possible in the	
2       A. Yes.		2       investigation. And the video is available, it	
3       Q. Okay. When was it that you first became		3       just needs to be downloaded. So there's no	
4       involved then after receiving the text message?		4       reason to wait to download it and view it	
5       A. So once -- once the investigation had progressed		5       because we have the Taser coordinator who is the	
6       to the point that folks were coming downtown...		6       person who has the capability to use the	
7              The involved officers had come downtown.		7       equipment to download that video properly,	
8              And we use another room in city hall, which is		8       present right there on the scene, so there's no	
9              really a collection of rooms, but Room 100 as		9       reason not to do it now.	
10          the headquarters for where we bring the involved		10       Q. And in the course of a homicide investigation	
11          officers. The folks from the police Federation		11       you're taught to collect as much evidence as	
12          come, the chaplain, the attorneys and so on and		12       quickly as possible, isn't that right?	
13          so forth.		13       A. Yes. We like to get as much as we can.	
14          At that point the Taser coordinator, who was		14       Q. You want to prevent any of the evidence from	
15          Adam Grobove, came down and asked for guidance		15       being disturbed or perverted in any fashion?	
16          about downloading the Taser cam video.		16       A. Yes.	
17          And at that point I said, yes, you know, we		17       Q. Okay. And the sooner you have evidence in your	
18          should download that. Get the item entered into		18       possession, the -- the sooner you have the	
19          evidence and then check it out, download it, as		19       ability to go and collect other evidence	
20          his procedure normally is so that it can be		20       potentially?	
21          viewed as part of the investigation.		21       A. Yes.	
22          So that was at the first point where, you		22       Q. Before that evidence is disturbed?	
23          know, I offered input about the course of the		23       A. Yes.	
24          investigation.		24       Q. Okay. And my understanding is that from the	
25       Q. So you're in Room 108 at that point in time?		25       outset you're treating this as a critical	
	23		25
1       A. So the conversation, as I recall, started in		1       incident?	
2       Room 108.		2       A. Yes. From the outset we treat it as a critical	
3              I believe according to the supplements in		3       incident.	
4       the case we went to Room 100.		4              It wasn't clear at the time what the	
5              I don't -- I don't recall being in 100		5       ultimate outcome would be. And obviously David	
6       versus being in 108. I remember the		6       Smith didn't die at the scene, the way we see in	
7       conversation, but which room it took place in		7       some critical incident cases where, you know, we	
8       didn't really stick in my memory.		8       know right there that we're dealing with a	
9       Q. And the individuals listed in being in 108 at		9       death. But it was clear that it was serious	
10       the time that you had met with Adam Grobove were		10       incident, he was going to be admitted to the	
11       Sergeant Erick Fors, Lieutenant Zimmerman and		11       hospital and that falls under our critical	
12       yourself in 108.		12       incident policy.	
13       Does that sound familiar in terms of people		13       So it's not only cases of death that get	
14       who were there?		14       treated as a critical incident.	
15       A. Yes.		15       Q. And as a critical incident you had -- I know you	
16       Q. Okay. Is there anyone else that you had		16       had mentioned that a Federation officer is there	
17       remembered being there at the time?		17       and that was -- eventually captain -- or	
18       A. No.		18       Lieutenant Delmonico showed up on the scene?	
19       Q. Okay. So when Adam Grobove comes to you and		19       A. I don't know if he was at the scene.	
20       talks about the Taser download you think it's		20       Q. Or I'm sorry. At Room 100?	
21       important to get that information right away?		21       A. Yes. Yes. The Federation always shows up in	
22       A. Yes.		22       Room 100 for the involved officers.	
23       Q. Okay. And why is it important to get that		23       Q. And what's the purpose of the Federation showing	
24       information right away?		24       up?	
25       A. Well, obviously we want to have as -- as many		25       A. It's part of our critical incident policy that	

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1	the -- the officers have a right to confer with	1	professionally-competent investigation into his
2	the Federation rep and an attorney.	2	homicide?
3	And so the Federation comes so that the	3	A. Yes, they are.
4	officers can exercise their right to confer with	4	Q. Okay. And any concerns about the officers'
5	them.	5	feelings wouldn't get in the way of that?
6	Q. And what's your understanding of why they have	6	A. No.
7	that right?	7	Q. Okay. Now in accordance with some of the
8	A. Well, because it's a criminal investigation at	8	officer's rights that he is provided under your
9	that point.	9	policy, there -- there are only certain
10	All the information that homicide is	10	individuals who he needs to talk to and he only
11	collecting is going to be presented to the	11	needs to talk to those individuals about certain
12	county attorney's office and possibly, or in the	12	things. Is that a fair characterization?
13	case of a death definitely, reviewed by a	13	A. Yes, that is a fair characterization.
14	grand jury. And so the officers have legal	14	Q. One of the things that can be discussed with the
15	rights that the Federation protects.	15	officer is issues related to the collection of
16	Q. Now I read in your critical incident policy	16	evidence?
17	that, you know, part of the critical incident	17	A. Yeah. In general they take a public -- what's
18	policy in addition to making sure that evidence	18	called a Public Safety Statement from the
19	is adequately collected is to sort of be	19	officers, so asking them questions that would
20	sensitive to the officer's needs. You don't	20	lead us to any additional suspects, any other
21	want to treat the officer like a suspect?	21	injured people, the recovery of weapons. Those
22	A. That is correct. That is part of our policy.	22	things that are of immediate public safety
23	Q. Okay. Just because you're not treating the	23	interest.
24	officer like a suspect, that doesn't mean that	24	Q. And that's what can be asked at the scene?
25	the MPD is going to treat that investigation	25	A. Correct. We don't ask additional questions
	27		29
1	with any less rigor, does it?	1	beyond the Public Safety Statement that's taken,
2	A. Correct. And, you know, we have certainly	2	other than, you know, things like, "Can I get
3	investigations that are ultimately ruled to be	3	you a drink of water?" And, you know, "Do you
4	justifiable homicide, after review by the	4	need to use the bathroom?"
5	county attorney's office, that don't involve any	5	But we don't ask investigative questions
6	officers, involve completely civilians.	6	beyond the Public Safety Statement. That's
7	And so, you know, officer-involved cases are	7	what's allowable under our policy.
8	not ultimately the only ones that are reviewed	8	Q. You are allowed to require -- the MPD can
9	and determined to be justifiable homicide.	9	require the officers to turn over any equipment
10	Q. One of the things that's noted, though, is you	10	on their person at that point?
11	want to make sure you maintain -- in the	11	A. Well, the policy calls for collecting their
12	critical incident policy, is you want to make	12	weapon. So we do a gun exchange in the case of
13	sure that you maintain public confidence. There	13	a shooting.
14	is sort of an awareness, at least on the MPD's	14	In this case we collected the Taser, which
15	part, that if there are not proper procedures in	15	is department-issued property.
16	place the investigation of its own officers	16	You know, in other cases certainly we've had
17	might appear less than proper?	17	officers who were involved in a prolonged
18	A. Yes, that's true.	18	struggle who have torn uniforms and we ask them
19	Q. And so you want to be particularly keen to	19	if we can collect that right at the scene. And
20	making sure that the proper procedural steps are	20	we have hospital-type scrubs that we exchange
21	taken with respect to investigating an	21	for their clothing.
22	officer-involved homicide?	22	So depending on the circumstances, we
23	A. Yes.	23	collect or ask for different things.
24	Q. Mr. Smith, his family, the entire community,	24	MR. STORMS: Can I have this marked,
25	they're entitled to a proper and	25	please.

8 (Pages 26 to 29)

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	30		32
1	(Exhibit 92 marked.)	1	over, you can certainly ask them what equipment
2	BY MR. STORMS:	2	they have on them?
3	Q. I'm going to show you what's been marked as	3	A. I'm not sure we've ever had that situation where
4	Exhibit 92. Take a moment to review it.	4	we've just asked, "What's every piece of
5	I'm going to direct you towards the back of	5	equipment that you're carrying?"
6	the policy where the critical incident is	6	We've never asked that question that way.
7	discussed.	7	Q. Have you ever asked whether or not they're in
8	In particular I'm going to go to page 9 of	8	possession of evidence related to the incident,
9	12.	9	physical evidence?
10	Do you see the -- in the first full	10	A. Have we ever asked that question?
11	paragraph on page 9...	11	Q. (Nodding.)
12	Well, first of all, does this appear to be a	12	A. To my knowledge we've never asked that question.
13	correct copy of your MPD policy related to	13	Q. How about a question similar to that?
14	critical incidents?	14	A. We've asked questions like, you know, "Is any of
15	A. Yes.	15	your equipment damaged?" "Do you have any
16	Q. Here it states, "If requested by Investigators,	16	injuries?" We frequently ask those questions
17	Involved Officers shall make themselves	17	because there's a struggle involved. "Do you
18	available for firearms inspection and shall	18	have any injuries for us to photograph?"
19	surrender his or her firearm and any other	19	So -- so we ask questions based on the
20	requested equipment to them."	20	information that we know about the use-of-force
21	A. Yes. And generally we do the weapons exchange.	21	incident.
22	We haven't had any cases that I can recall	22	Q. Do you ask them simply, "What equipment did you
23	that involved an impact weapon.	23	use in this incident?"
24	But, for example, we could ask to -- to take	24	A. No.
25	a Taser. We often do ask to take pieces of a	25	Q. Why wouldn't you ask them that question?
	31		33
1	uniform that have been damaged in a fight.	1	A. We know from the information about the use of
2	Most of the time it involves the gun	2	force -- we know what kind of
3	exchange, but certainly in other cases it has	3	use-of-force-incident it was, but we've never
4	involved other kinds of equipment, typically	4	asked that question, "What equipment did you
5	uniform.	5	use?"
6	Q. Well, in order to determine what type of	6	We know if it was a shooting, we know if
7	equipment has been involved, the basic question	7	there was a struggle... But we don't ask that
8	of "What equipment did you use" would be	8	broad question. We've never asked that broad
9	something that would be asked of the officers,	9	question.
10	wouldn't it?	10	MR. BENNETT:(Sotto voce comment.)
11	A. Well, generally during the Public Safety	11	MR. STORMS: Yeah.
12	Statement, you know, there's that question	12	BY MR. STORMS:
13	that's asked about, you know, the direction of	13	Q. I'm asking you why -- why you wouldn't ask that
14	any kinds of fire, the weapons that were used,	14	question?
15	the public safety pieces that get asked. So	15	A. We wouldn't ask that question in that way
16	it's not an exhaustive set of questions.	16	because once the Public Safety Statement has
17	But yes, generally we have an idea of what	17	been made we know -- we know the general
18	equipment was used in the actual use-of-force	18	parameters of the use-of-force incident.
19	piece.	19	Q. Well, how would you know if an officer used his
20	And we can clearly see if there's damage	20	baton if he put the baton back in his utility
21	that's been done to someone's uniform or they	21	belt?
22	have something broken, pieces of equipment	22	A. Well, because when they give the Public Safety
23	hanging off of their belt. We can see those, so	23	Statement and they're asking about, you know,
24	we don't need to ask questions about it.	24	issues for medical treatment, additional
25	Q. Well, if you can ask them to turn equipment	25	suspects, you know, they're going to get an

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1        overview of that use of force. But beyond that, 2        you know, we've never asked that broad question. 3        We don't ask that broad question. 4              MR. BENNETT: (Sotto voce comment.)		1        of the incident we would certainly ask about 2        that. We would find out that information. 3              If a civilian witness refused to make a 4        statement at that time we wouldn't know about it 5        then either.	
5        BY MR. STORMS: 6        Q. Why? 7        A. Because -- because what -- because we ask the 8        public safety statement and that's designed to 9        get at the -- the issues that are -- that are 10       required to be handled immediately at the scene. 11       And those broad questions we're supposed to ask 12       later when the officer comes in for a statement. 13       Q. Well, one of the things you want to accomplish 14       at the scene is to collect all available 15       evidence. 16       A. Yes. 17       Q. If the officer is in possession of evidence that 18       is not disclosed in the Public Safety Statement 19       how would you as a department be aware of the 20       existence of that evidence? 21       A. If it's not disclosed during the Public Safety 22       Statement and there's no witness officer or 23       other witness who would be able to tell us about 24       it, we might not know until we took a statement 25       from an officer.		6        Q. Why is it that you were able to photograph 7       Officer Callahan and Officer Gorman from every 8       angle under your policy? 9       A. That's typical. We photograph in every case so 10       there's not a question about what kind of 11       uniform or markings that the officers had 12       designating them as police. 13       We sometimes have officers who are in plain 14       clothes, but wearing a badge around their neck 15       or they're wearing raid garments that say 16       "POLICE." 17       We want to make sure that it's clear, you 18       know, that officers were in full uniform, or 19       they were in some kind of modified uniform, or 20       if they were plain clothes wearing a badge on a 21       chain around their neck, that that's documented. 22       Q. Have you seen the photographs that were taken in 23       this case? 24       A. No, I have not. 25       Q. You were in the room when the photographs were	
	35		37
1        Q. So you would -- so under MPD policy an officer, 2       if he doesn't disclose critical evidence during 3       a Public Safety Statement, he would be able to 4       walk away from that scene without ever having to 5       disclose to the MPD the existence of that 6       evidence? 7       A. Yes. If there were no witness officers who were 8       giving us a statement at the time and there were 9       no other witnesses and there were information 10       that wasn't part of the Public Safety Statement, 11       we wouldn't know it until we took a voluntary 12       statement from the officer later. 13       Q. If a civilian was involved in a potential 14       homicide and had evidence related to that 15       homicide on their person, would you not ask 16       about their possession of that evidence? 17       A. If we're taking a statement from a civilian 18       witness and they're -- they're giving us a 19       statement, we would ask them about that. 20       When the officer comes in for a statement we 21       obviously ask questions of them, but we're not 22       taking that statement at the time because our 23       policy doesn't allow for that. 24       So when we're taking a statement from a 25       civilian witness if we're taking it at the time		1        being taken, weren't you? 2       A. I don't believe I was still in the room when the 3       photographs were being taken. 4       Q. So you think you left before they did the 5       inventory of Officer Callahan and 6       Officer Gorman? 7       A. I think so. I don't -- I don't remember the 8       photographs being taken. 9       Q. So you're not aware of the fact that they 10       photographed, for example, the disposable camera 11       that Officer Callahan used to have a photograph 12       of his face taken? 13       A. I saw that in the statements, yes. 14       Q. Okay. So you did see that in the statements? 15       A. Yes. That they used a -- a disposable camera to 16       take pictures because he had an injury to his 17       jaw. 18       Q. So is -- is the only evidence Officer Callahan 19       required to turn over is the evidence that he 20       voluntarily decides to turn over? 21       A. Our policy is written so that we take the Public 22       Safety Statement. We have the officers 23       photographed. We do a weapons exchange. But 24       they're not required to give a statement at the 25       time.	

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1	The statement is a voluntary statement that they give, so if we were to compel a statement from them at the time of the incident it would be a Garrity statement.	1	your shift, aren't you?
2	A Garrity statement cannot be used in the criminal portion of the investigation, which is what homicide is doing.	2	A. Yes.
3	Q. Can an MPD officer knowingly leave the scene of an incident and knowingly leave Room 100 or Room 108 with critical evidence related to the incident without repercussion?	3	Q. Officer Callahan didn't do that, did he?
4	A. If there were no other witness who would be able to tell us about that piece of evidence the officer could leave and then during the course of the rest of the investigation, you know, hopefully that evidence would come to light.	4	A. No, he did not.
5	Is it possible that someone could conceal a piece of evidence that only they knew about it, no one else knew about and never -- it would never come to light? Yes, of course.	5	Q. Okay. Do you find that problematic?
6	If I'm the only one who knows about something, no one else knows it exists, and I choose to never disclose it, no one else would ever know but me. So yes, of course that could happen.	6	A. I wish that he had turned that over at -- at the scene in Room 100, yes, that would be ideal.
7		7	Q. So do you find that problematic?
8		8	A. Yes, I wish he would have turned it over in Room 100, that would have been ideal.
9		9	Q. And it did violate MPD policy?
10		10	A. We don't have a policy -- we don't have a policy that's specifically written for personal recording devices, cameras, cell phones. We've asked the city attorney's office for guidance because those are our personally-owned devices.
11		11	We haven't yet received information to write a policy. We still don't have a policy for personal recording devices and phones.
12		12	Q. Well, you just told me that MPD policy is that officers need to turn over all evidence related to a crime before the end of their shift.
13		13	A. Yes.
14		14	Q. Now evidence is evidence regardless of whether or not it was captured by Minneapolis-issued
15		15	
	39		41
1	Q. So are you saying the officer has no obligation either on the scene or in Room 100 to turn over critical pieces of evidence related to a critical incident?	1	equipment or personal equipment?
2	A. I would say the officer has a professional obligation to turn over critical pieces of evidence, --	2	A. Yes. However, we're told from the city attorney's office that because this is a personally-owned device that the question is more complicated.
3	Q. And --	3	Ideally I think had we known about the existence of the pen camera we would have asked the crime lab to download that video immediately. That would have been the best way to handle that piece of evidence. But we didn't know about it at the time. If we had, that's what we would have done.
4	A. -- yes.	4	Q. So you're saying what you -- that you believe that what Officer Callahan did was proper under policy; is that what you're saying?
5	Q. -- what's that -- what's that professional obligation consist of?	5	A. No. I'm saying that we should have a better policy that would address specifically this issue. We don't.
6	A. Well, you're required under all sorts of sections of our policy to be -- to be truthful when you're questioned.	6	We do have the policy that you have referred to.
7	For example, in this case if in the force review a Garrity statement had been taken from the officers, you're compelled to be truthful under a Garrity statement.	7	Ideally, the best thing for Officer Callahan to have done would have been to have turned over that video at the scene. That is the best-possible scenario. That didn't happen in this case.
8		8	
9		9	
10		10	
11		11	
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13		13	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23	Q. But -- and -- but you're also compelled to turn over all critical -- all evidence in your possession related to a crime before the end of	23	
24		24	
25		25	

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1	Q. Doesn't the law require individuals -- officers 2 and individuals to turn that evidence over to 3 homicide investigators?	1	over. His attorney turned it over at the time 2 he came in to fulfill his obligation to give a 3 statement.
4	A. The law --	4	Q. And he didn't turn it over in Room 100?
5	Q. Well, wouldn't it be obstruction of justice if I 6 were to conceal evidence from homicide 7 investigators?	5	A. That's correct, he did not.
8	MS. FUNDINGSLAND: I'm going to object 9 to the form of the question as to time. 10 Foundation.	6	Q. And he actually -- it was his attorney who 7 turned it over?
11	BY MR. STORMS:	8	A. Correct.
12	Q. You can answer.	9	Q. Now you understand that as an attorney --
13	A. Yes, if somebody were willfully hiding evidence 14 and, you know, intended to never turn that over 15 to the police.	10	MR. BENNETT: He turned a version of --
16	Q. You -- you don't believe that Officer Callahan 17 accidentally walked out of Room 100 and went 18 home with that pen camera, do you?	11	MR. STORMS: Yeah.
19	A. I don't know the answer to why Officer Callahan 20 didn't turn over the pen camera. I don't know. 21 I don't know whether he intended not to turn it 22 over because he wanted to view it first. I 23 don't know whether he forgot in all of the, you 24 know, upheaval of being involved in a critical 25 incident.	12	MR. BENNETT: -- it. He didn't turn it.
		13	MR. STORMS: I'll get there.
		14	BY MR. STORMS:
		15	Q. You understand as attorneys that we have ethical 16 obligations not to conceal or destroy evidence; 17 correct?
		18	A. Yes.
		19	Q. So how do you know that it was Officer Callahan 20 who made the decision not to turn -- or to turn 21 that information over to the MPD?
		22	A. I don't know beyond the fact that if 23 Officer Callahan had intended for that video 24 never to come to light, he would never have 25 turned it over to anyone, including his
	43		45
1	I don't know the answer to that question 2 because I wasn't in Officer Callahan's mind.	1	attorney.
3	Q. I'm asking you what you believe.	2	Q. Do you know... What -- what steps has homicide 3 taken to verify the veracity of that video 4 evidence?
4	A. I don't know. I don't -- I honestly don't know 5 why Officer Callahan didn't turn that over.	5	A. So that particular video evidence was compared 6 with the other video evidence. 7 So there's video from the Y. There's video 8 from the Taser cam. And all of the video is 9 consistent.
6	Q. Okay. Why didn't homicide ever ask Officer 7 Callahan why he did not turn that camera over?	10	Q. The... You have an understanding that the -- 11 the pen camera video, as you viewed it, was not 12 taken by MPD investigators or homicide 13 investigators directly from the pen camera? It 14 was something that was taken from or viewed 15 after receiving it on a flash drive from 16 Officer Callahan?
8	A. That -- that question is immaterial to the 9 information that's going to be presented to the 10 grand jury about the use of force.	17	A. That's correct.
11	Q. Wouldn't it be material to the question of 12 whether or not there was obstruction of justice?	18	Q. What has the MPD done investigative-wise to 19 determine that the video started where 20 Officer Callahan has represented that it 21 started?
13	A. No. Because Officer Callahan turned that video 14 over at the first time that he had contact with 15 investigators, when he came in to give his 16 statement.	22	A. You mean in terms of like asking a forens -- 23 forensics to examine the video?
17	Q. Well, he had contact with investigators on the 18 scene.	24	Q. Right.
19	A. But he wasn't being questioned at that point.	25	A. The county attorney's office didn't ask us to
20	Q. He didn't -- he also didn't fulfill his 21 professional obligation, as you put it, to 22 divulge relevant information related to a 23 critical incident, did he?		
24	A. No, he did not turn that over at the scene. But 25 at the time that he was questioned he turned it		

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1	have any forensic examination of that particular	1	statements overall are describing the same
2	video done. We could have, but we did not.	2	incident from different perspectives.
3	Q. You don't need the county attorney's office to	3	Q. And so do you have an understanding of whether
4	direct you to do that, do you?	4	or not the video revealed inconsistencies in the
5	A. No. But if it's not -- if it's not something	5	officer and witness statements?
6	that they need to have done for the presentation	6	A. No.
7	of evidence to the grand jury, why would we have	7	Q. Okay. Did you compare the witness statements to
8	the forensic computer examiners work on this	8	the video?
9	particular piece of evidence versus another	9	A. I did not -- I did not sit down and review every
10	that's needed in another criminal investigation?	10	witness statement while I was watching the
11	Q. Well, how about to promote the public confidence	11	video. So, you know, if you're looking for a
12	and show that David Smith and his family are	12	detailed timeline of, you know, "Witness X said
13	receiving a competent and professional homicide	13	this at the point where we think this video is
14	investigation? Wouldn't that be a good reason	14	showing this," no, I can't answer that question
15	to investigate the veracity of that evidence?	15	because I wasn't the primary investigator on
16	A. If there's no indication because there's nothing	16	this case.
17	in the case that suggests that that piece of	17	However, all of that evidence
18	video differs from any of the other video or	18	comprehensively provides a consistent account of
19	witness evidence on the scene, then there's no	19	the incident and all of it was viewed by the
20	outstanding question.	20	grand jury.
21	Q. Well, none of the video evidence captured the	21	Q. Well, the grand jury only saw whatever the
22	time before the pen camera started, did it?	22	Hennepin County Attorney's Office decided to
23	A. But the witness statements capture the entire	23	show it; right?
24	incident from the time before the officers	24	A. Correct.
25	arrive, from the statements of the young boy,	25	Q. Okay. We didn't get to present our evidence at
	47		49
1	through the manager on duty bringing the	1	the grand jury?
2	officers upstairs, through the uninvolves	2	A. Correct.
3	non-employee witness at the Y who was watching	3	Q. Okay. So as you sit here today what proof do
4	the entire incident, through the Y's	4	you have that the entire pen camera video was
5	surveillance video, through the Taser cam video.	5	viewed by yourself and other investigators?
6	Absent this pen cam video entirely, this	6	MS. FUNDINGSLAND: I'm sorry, can you
7	incident is well documented.	7	repeat that?
8	Q. Well, the pen camera video -- the video evidence	8	MR. STORMS: Yeah, let me rephrase the
9	would be the best possible evidence of what	9	question.
10	actually happened, wouldn't it?	10	BY MR. STORMS:
11	A. The video evidence is like all the evidence --	11	Q. As you sit here today what certainty do you have
12	other evidence. It's one slice of what	12	that Officer Callahan when he turned over the
13	happened.	13	flash drive turned over the entirety of the
14	The pen camera video, the surveillance	14	video that he had recorded that day?
15	video, the Taser video, those are all small	15	A. I'm not a forensic examiner so I don't have the
16	slices. They don't capture, you know, a	16	expertise to answer that question.
17	360-degree panoramic view of this incident.	17	Q. And you didn't ask forensic examiners to answer
18	Neither do the witnesses.	18	that question, did you?
19	Nothing captures a 360-degree panoramic view	19	A. No, we did not.
20	of any incident in any case.	20	Q. Nobody did?
21	Q. Well, do you know that the video evidence shows	21	A. No.
22	inconsistencies in both witness statements and	22	Q. Because they just took the officer's
23	officer statements?	23	representation on faith?
24	A. Inconsistencies? I know that the -- the video	24	A. There was -- there was no indication that this
25	and the witness statements and the officer	25	video differed in any material way from any of

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1	the other evidence in the case.	1	form of the question.
2	That particular video wasn't an open	2	BY MR. STORMS:
3	question.	3	Q. Is that what you're telling me? Really?
4	The incident was well documented.	4	A. So -- so what you're suggesting is that the
5	Q. How come homicide never even asked	5	circumstances of this case are equivalent to me
6	Officer Callahan to turn the camera itself over?	6	being a -- a gangster involved in a drive-by
7	A. You know generally when we have video evidence,	7	shooting?
8	digital video evidence, we don't collect the	8	Q. Well, why does it have to be a gangster?
9	entire system.	9	Isn't -- isn't Officer Callahan a homicide
10	So we have the evidence from the Y camera.	10	suspect in this case?
11	We did not collect their system.	11	A. Homicide --
12	We collect evidence routinely from various	12	Q. Yes -- yes or no? Is he a homicide suspect in
13	digital recording systems--convenience stores	13	this case?
14	where we have shootings. Banks. We don't	14	A. Yes.
15	collect the entire system.	15	Q. And was Officer Gorman a homicide suspect in
16	So I don't think that it occurred to the	16	this case?
17	investigators at that point to collect the	17	A. Yes.
18	entire recording system because generally we	18	Q. And you had an understanding that
19	just collect the digital recording itself.	19	Officer Callahan, as a homicide suspect, had a
20	Q. It's a lot easier to collect a pen than it is to	20	recording device that recorded portions of a
21	collect an entire security system from, for	21	homicide?
22	example, the YMCA, isn't it?	22	A. Yes.
23	A. Sure. But, you know, we certainly could collect	23	Q. And despite the fact that he knowingly did not
24	every digital recording system. As you know,	24	immediately turn that device over to
25	some of them are quite small.	25	investigators, you gave him a pass and never
	51		53
1	We sometimes have evidence that we collect	1	forensically examined that pen; isn't that
2	from, you know, the home of a private person,	2	right?
3	for example, who has one camera that records	3	A. We never forensically examined that pen. But to
4	surveillance video on their garage because their	4	equate this case with every other homicide case
5	neighborhood has a problem with thefts from	5	we investigate is -- is false.
6	their garage.	6	Q. Why? Is Officer Callahan entitled to some sort
7	But in that case, you know, we would simply	7	of different rules or does he have different
8	take the downloaded evidence, as we did from the	8	rights than any other defendant in a homicide?
9	Y, as we did in this case from the pen cam, as	9	Is that what you're saying?
10	we do from convenience stores.	10	MS. FUNDINGSLAND: Objection, compound
11	You know, we ask the owners of the system to	11	and argumentative.
12	download that evidence, the video evidence for	12	THE WITNESS: No, but as I mentioned --
13	us and then we take it.	13	BY MR. STORMS:
14	If the owner doesn't know how to download	14	Q. It sounds like that's what you're saying.
15	the images from their own system our crime lab	15	MS. FUNDINGSLAND: Excuse me.
16	will go out and attempt to do that for them, but	16	She's trying to answer the question.
17	we don't routinely do that.	17	THE WITNESS: As I mentioned before, we
18	Q. Well, you're not talking about someone who is a	18	have a number of cases every year that do not
19	homicide suspect there, are you? If I was a	19	involve off- -- involve officers, involving, you
20	homicide suspect and I just turned over a	20	know, entirely groups of civilians where the
21	flash drive of what I said was the entire	21	cases are determined to be justifiable homicide.
22	version of a murder, you wouldn't get a warrant	22	And, you know, certainly we treat individual
23	or in some other way try to collect that	23	cases based on the circumstances of those cases.
24	recording device from me as a homicide suspect?	24	BY MR. STORMS:
25	MS. FUNDINGSLAND: I'll object to the	25	Q. Well, in this case the result of the method of

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1	dealing with the pen camera video was for you	1	turn that pen cam over at the scene or even
2	and the rest of the MPD to allow an active	2	mention it to us in Room 100. If he had we
3	participant in the homicide to decide what would	3	would have asked the crime lab to download the
4	be evidence in the investigation; is that right?	4	video from that pen cam.
5	MS. FUNDINGSLAND: Objection,	5	That's what we would do in a normal
6	argumentative.	6	circumstance with anyone. We would -- we would
7	BY MR. STORMS:	7	get the video. Ideally we would have the crime
8	Q. Who decided what video was going to be turned	8	lab download it.
9	into the MPD in this case?	9	We didn't have that opportunity because
10	A. Officer Callahan, --	10	Officer Callahan didn't tell us he had a pen
11	Q. Okay. Now what --	11	cam.
12	A. -- in terms of that particular piece of video.	12	Q. And why is it that no one's ever asked him why
13	Q. And what did the MPD ever do to ensure that they	13	he didn't turn the pen camera over?
14	received the entire video?	14	A. Well, in the administrative review if -- if the
15	A. There was no reason to believe we did not	15	department wanted to pursue that as a policy
16	receive the entire video. It was not the only	16	question, that would have been the appropriate
17	piece of evidence in this case.	17	time to ask that question.
18	MR. BENNETT: (Sotto voce comment.)	18	I haven't seen the administrative review
19	BY MR. STORMS:	19	that was done on the force, so I can't answer
20	Q. Is the answer nothing?	20	any questions about what questions were asked
21	A. The case is well documented.	21	and what questions were not asked. But I
22	Q. Is the answer nothing?	22	believe that that is a policy question that
23	A. We didn't do a forensic investigation, no.	23	would better have been addressed there.
24	Q. Okay. And you're telling me that if a homicide	24	Q. As the -- as your current role as captain in
25	suspect turned over video evidence of a homicide	25	charge of criminal investigations do you not
	55		57
1	that he had allegedly committed or potentially	1	have the authority to go and ask that question
2	committed, that you would not make efforts to	2	right now if you want to?
3	secure the recording device? Is that what	3	A. To -- to call officer -- to ask Officer Callahan
4	you're telling me?	4	to come in and make a voluntary statement and
5	MS. FUNDINGSLAND: Objection,	5	answer that question?
6	argumentative.	6	Q. Yes.
7	THE WITNESS: It depends on the	7	A. We could ask him to do that, but I wouldn't.
8	circumstances. But not -- not in every case	8	Q. Why?
9	would we go out and seize a system if we had the	9	A. Because I don't believe it was material to the
10	video recording from it.	10	use-of-force incident.
11	And, in fact, in almost no cases do we seize	11	Q. You don't believe that it was material as to
12	an entire recording system.	12	whether or not he had professionally handled
13	BY MR. STORMS:	13	evidence properly or legally handled evidence
14	Q. You're -- you're just --	14	properly? It's not material to that?
15	A. We've never had a case -- we've never had a case	15	A. What you're suggesting is that there should have
16	under the circumstance you described.	16	been criminal charges brought.
17	This is the only case I'm aware of that	17	I don't believe that there's probable cause
18	we've ever had where someone involved in a	18	to show that he intended to withhold that.
19	critical incident or another homicide, for that	19	It was turned over at the first meeting
20	matter, has ever had a personal recording device	20	between Officer Callahan, his attorney and the
21	that captured the incident.	21	investigators for the purpose of questioning
22	Under ideal circumstances we would have	22	Officer Callahan.
23	known about that right at the time of the	23	I don't believe that it would be possible to
24	incident.	24	show that he intended to withhold that piece of
25	I can't tell you why Officer Callahan didn't	25	evidence because it was turned over at the first

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1      time that he met with investigators for 2      questioning.		1      circumstances we would have known about that 2      pen cam at the time of the incident.	
3      Q. Well, it was obvious he intended not to turn it 4      over at the conclusion of the incident; right?		3      Q. Because he would have told you?	
5      A. He did not turn it over at the time of the 6      incident.		4      A. Yes.	
7      Q. And you know he took the... 8      Are you aware of the fact that he took the 9      video home and watched it with his wife before 10     anyone in the MPD had seen it?		5      Q. Okay.	
11     A. I had heard that.		6      A. But he didn't. I can't answer the question 7      about why, but he turned it over when he met 8      with investigators, he and his attorney, at the 9      time that he was questioned.	
12     Q. That's not proper, is it?		10     Q. Do you know that he took that pen camera video 11     and downloaded it onto his own personal 12     computer?	
13     A. If he had -- if he had not watched it then --		13     A. I don't know.	
14     Q. Is that proper?		14     Q. Do you know that that personal computer has 15     editing equipment on it?	
15     A. To watch the video before you give a statement?		16     A. I don't know what he has on his personal 17     computer.	
16     Q. No. So is it proper for him to go home and 17     download evidence of a critical incident and a 18     homicide and watch it with his wife before 19     divulging it to MPD?		18     Q. Why didn't you find that out?	
20     MS. FUNDINGSLAND: Objection, compound 21     and argumentative.		19     A. Because this was -- this video was only one 20     piece. It was consistent with the other 21     evidence in this case.	
22     THE WITNESS: I -- I have already 23     answered the question by saying that the ideal 24     thing would have been to have collected that 25     video from him right at the time.		22     There were no open questions about this 23     video.	
	59	24     Q. Well, how do you know that before he turned on 25     the camera he wasn't calling David Smith racial	
1      If he had wanted to watch the video before 2      making his statement, we would have permitted 3      that.		1      words? Or racial -- how do you know that?	
4      It's part of our policy that when we have 5      video that's captured, like squad video, for 6      example, we allow officers to review that before 7      they make their statement.		2      A. I don't know that. But I also know that there 3      was no suggestion of that from any of the 4      witness statements.	
8      So I do not think that there was a problem 9      with him reviewing the video before he made the 10     statement. I wish it had occurred under 11     different circumstances.		5      And, in fact, the witness statements several 6      times mentioned how professional the officers 7      were. They mentioned that they were trying to 8      be friendly with him. That they said something 9      like, "Hey, come on over here, we want to talk 10     to you."	
12     BY MR. STORMS:		11     The witnesses did not provide any evidence 12     that they were using any racial slurs or any 13     other kinds of inappropriate language.	
13     Q. So when you say under ideal circumstances, do 14     you mean that had he had done what he was 15     supposed to do, it would have been him following 16     the law and his duty, as opposed to what he 17     actually did?		14     Q. Do you know how close the witness was standing 15     to them at the time?	
18     MS. FUNDINGSLAND: Objection, 19     argumentative and asked and answered.		16     A. I believe that in his statement the witness who 17     was not an employee of the Y said that he was 18     about 20 feet away.	
20     THE WITNESS: I would not answer the 21     question that way. Those are your words, not 22     mine.		19     Q. And did you know that that witness had 20     previously worked for a police department?	
23     BY MR. STORMS:		21     A. Yes, I saw that in his statement.	
24     Q. Well, how would you answer the question?		22     Q. And so that wouldn't give you some reason to be 23     concerned about whether or not that witness 24     could potentially be biased in terms of the 25     statement he gave?	

16 (Pages 58 to 61)

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1	MS. FUNDINGSLAND: Objection,	1	know from a video forensic examiner perspective
2	argumentative.	2	what exactly they would be able to tell us.
3	MR. BENNETT: He said he was biased.	3	Q. And you didn't do it in this case because
4	THE WITNESS: He said that he -- that he	4	Officer Callahan is a police officer and not to
5	had worked for a police --	5	use the word you had put before, but a
6	MR. STORMS: Answer --	6	gang-banger.
7	THE WITNESS: -- agency in the past.	7	If this had been a gang-banger maybe you
8	MR. STORMS: -- my question.	8	would have taken that step?
9	BY MR. STORMS:	9	A. If the county attorney's office had requested
10	Q. I'm asking you whether or not that would give	10	that, we would have taken that step.
11	you cause to believe that he could have been a	11	Q. I'm not asking about the county attorney. I'm
12	biased witness?	12	asking about what MPD decides to do.
13	MS. FUNDINGSLAND: Same objection.	13	So if this had been some gang-banger who had
14	THE WITNESS: No. Because I read all of	14	this video device and turned it over would you
15	the witness statements. I didn't read his	15	have made that forensic effort?
16	statement in a vacuum, any more than I looked at	16	A. If there had been open questions about it, yes,
17	the pen camera video in a vacuum, any more than	17	we would have.
18	the investigators or the county attorney's	18	Q. And the fact that he initially concealed this
19	office looked at any of these items in a vacuum.	19	pen camera from investigators, that doesn't
20	I looked at them as part of the entire case.	20	create open questions to you in terms of the
21	Q. Well...	21	veracity of the evidence?
22	MR. BENNETT: (Sotto voce comment.)	22	A. No. Because he turned it over at the first
23	BY MR. STORMS:	23	meeting between his attorney, him and the
24	Q. Any videotaped evidence that could have been on	24	investigators at the time that they were going
25	the pen camera related to this incident that	25	to be questioned.
	63		65
1	wasn't disclosed, that could have been important	1	MR. BENNETT: (Sotto voce comment.)
2	evidence, couldn't it have been?	2	BY MR. STORMS:
3	A. Important evidence?	3	Q. Do you tend to -- is it good homicide protocol
4	Q. For -- related to this case, yeah.	4	to wait six days to get critical video evidence?
5	A. If -- if there were other video?	5	Is that how you prefer to conduct your
6	Q. Yes.	6	investigations?
7	A. Um, sure.	7	MS. FUNDINGSLAND: Objection,
8	Q. And if there were other video where they were	8	argumentative.
9	calling him racial slurs, that would be a big	9	THE WITNESS: No, we would have
10	problem, wouldn't it?	10	preferred to have it at the time.
11	A. It would be a big problem, but --	11	BY MR. STORMS:
12	Q. Now if you --	12	Q. And he should know that as a police officer,
13	A. -- there's no reason to think that that exists.	13	shouldn't he?
14	Q. Well, you -- if you would have done the forensic	14	A. Yes, he would know that as a police officer.
15	review or had the department do the forensic	15	Q. I mean there's no reason for him to think, "The
16	review you could say with certainty today that	16	right thing for me to do here as a
17	that didn't happen, couldn't you?	17	police officer is to take this video home with
18	A. If we had -- if we had asked for a forensic	18	me," is there?
19	evaluation of the video, hopefully they would be	19	A. I don't know what he was thinking.
20	able to tell us if the video appeared to have	20	Q. Does MPD train that that's okay?
21	been started in the middle.	21	A. But... No, of course not.
22	I'm not a forensic examiner so I don't know	22	He would have known that we would have
23	for sure whether they would be able to	23	wanted to collect as much evidence as possible.
24	definitively tell us, "This was the actual	24	I don't know what he was thinking at that
25	starting point." So I don't -- I guess I don't	25	point.

17 (Pages 62 to 65)

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	66		68
1	Q. And you -- in terms of evidence related to	1	is sitting in his pocket? Is that what you're
2	whether or not this was intentional, I'm showing	2	hoping for? Or --
3	you Exhibit 50-A. Have you seen that before?	3	A. I don't -- I don't know what he was thinking,
4	A. No.	4	but I don't know that I would characterize this
5	Q. It's a picture that was taken from the	5	pen cam as the most critical piece of evidence
6	disposable camera that we've taken the liberty	6	in the case.
7	to blow up.	7	Q. Are you aware of the fact that Dr. Baker said
8	And what do you see in his right breast	8	that that was the evidence that allowed him to
9	pocket?	9	conclude that this was a homicide?
10	MR. BENNETT: Left.	10	A. I didn't know that Dr. Baker said that. But I
11	BY MR. STORMS:	11	would say what I have said before--this pen cam
12	Q. Or left breast pocket?	12	video was one pieces of evidence in this case,
13	A. The pen cam.	13	along with video from the Y, the Taser cam, the
14	Q. Okay.	14	witness statements, the officer statements, all
15	MR. BENNETT: 72.	15	the other things that were gathered.
16	MR. STORMS: Yeah.	16	This piece of video -- I wish we would have
17	BY MR. STORMS:	17	had it at the time. That would have been the
18	Q. I'm showing you what's been marked as	18	ideal, to have it turned over immediately. But
19	Exhibit 72. Have you seen this before?	19	it wasn't the only piece of evidence in this
20	MS. FUNDINGSLAND: She's already stated	20	case.
21	she never saw any photos, counsel.	21	Q. Well, it was the clearest video evidence, wasn't
22	THE WITNESS: No, I never saw the	22	it?
23	pictures.	23	A. Yes.
24	MR. BENNETT: She's seeing it now.	24	Q. It --
25	BY MR. STORMS:	25	A. It's good quality.
	67		69
1	Q. Now when you --	1	Q. -- captured -- it captured almost the entire
2	MS. FUNDINGSLAND: Excuse me?	2	event?
3	MR. BENNETT: She's seeing it now.	3	A. Yes.
4	That's --	4	Q. We don't know how much of the event because no
5	MS. FUNDINGSLAND: Well, she'd already	5	one's ever found out?
6	said she had never seen the pictures. All	6	A. But like you just said, nearly the entire thing.
7	right?	7	Q. Nearly the entire thing.
8	BY MR. STORMS:	8	And how -- so how was that not the most
9	Q. When you look in the left breast pocket do you	9	critical piece of evidence that -- that the MPD
10	see the pen camera visibly?	10	came in possession of?
11	A. No. I see the bulge, but I don't see it	11	A. It was -- it was an important piece of evidence,
12	protruding from the pocket.	12	but I wouldn't have wanted to do this
13	Q. It looks like the pen camera has been shoved	13	investigation without all of the pieces of
14	into the pocket, doesn't it?	14	evidence.
15	A. Yes, it does.	15	I mean certainly in all of our
16	Q. Okay. Now that would evidence to you some	16	investigations, you know, this one was great.
17	intent to not disclose the pen camera, wouldn't	17	We had --
18	it?	18	Q. You haven't answered my question.
19	A. Or maybe he just put it back in his pocket and	19	So why was it not the most important piece
20	instead of the clip going on the outside it went	20	of evidence? What was more important than the
21	all the way in.	21	pen camera? How about that. What piece of
22	Q. And -- and so you would think that in the course	22	evidence was more important than the pen camera?
23	of everyone taking pictures of everything else	23	A. Well, I would say that there were things that
24	on his person, it just wouldn't occur to him	24	were equally as important as the pen camera.
25	that maybe the most critical piece of evidence	25	The statement from the 13-year-old boy

18 (Pages 66 to 69)

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	70		72
1	who -- you know, his encounter with David	1	Q. Well, and are you aware of the fact that the
2	Smith --	2	medical examiner stated that his knee was
3	MR. BENNETT: What does that have to do	3	between his scapulae? Are you aware of that?
4	with --	4	A. No, I -- I'm not aware of that.
5	THE WITNESS: -- was an extremely	5	MR. BENNETT: (Sotto voce comment.)
6	important piece of information because it	6	BY MR. STORMS:
7	explained to us, you know, how this incident	7	Q. And the reason that -- the reason that Gorman --
8	started, what circumstances were like at the Y	8	that we don't know how long he kneeled on his
9	before the officers even arrived, along with the	9	back is that your investigators never asked that
10	statement from the manager on duty.	10	question, did they?
11	The uninvolved, non-employee witness...	11	A. They asked the questions about where they were,
12	I mean we had more statements and more video	12	what techniques they were using, but they didn't
13	on this case than we do in nearly any other	13	ask how long they were there. And I wouldn't
14	critical incident investigation I've seen. All	14	have expected the officers to be able to
15	of those pieces are critical.	15	precisely answer the question of how long they
16	But the -- the pen camera video was a great	16	were there.
17	piece of evidence. But to suggest that it was	17	Q. Well, and without the pen camera we would never
18	the only thing we had in this case and that	18	know, would we?
19	somehow if we hadn't had that piece of video we	19	A. No, we wouldn't have nearly as precise --
20	would have nothing, would be false.	20	Q. And --
21	BY MR. STORMS:	21	A. -- an estimate.
22	Q. Well, without that video how would we know that	22	Q. And Gorman could have said it was 30 seconds and
23	Gorman kneeled on Smith's back for 4-1/2	23	we would have no way to prove otherwise, would
24	minutes?	24	we, without the pen camera?
25	A. Well, we would have known from their statements.	25	A. No. We know the overall time of the incident,
	71		73
1	Yet we wouldn't have known -- we wouldn't have	1	so we could certainly make some estimates, but
2	known the length of time. However, we would	2	we wouldn't be nearly as precise without the
3	have known because Officer Gorman says he was	3	pen camera video.
4	using the technique of putting his knee on David	4	Q. So... And the question of how long they
5	Smith's shoulder at the conclusion.	5	continued to kneel or sit on David Smith's back,
6	Both of the officers described themselves as	6	that's very relevant to the inquiry of
7	being in the positions that they were in.	7	mechanical asphyxia, isn't it?
8	Q. Well, Gorman says he put his left knee on	8	MS. FUNDINGSLAND: Object to the form of
9	Smith's back; right?	9	the question.
10	MR. BENNETT: On his right shoulder.	10	THE WITNESS: Dr. Baker would be the
11	THE WITNESS: He says he put it --	11	best person to answer questions about that. But
12	MR. STORMS: On his right shoulder.	12	obviously, yes, the position that they had him
13	THE WITNESS: He put his knee on his	13	in was relevant to the mechanical asphyxia,
14	shoulder.	14	which was, you know, one of the contributing
15	BY MR. STORMS:	15	factors that Dr. Baker --
16	Q. And in the video it clearly shows at times	16	MR. BENNETT: It was the cause of death.
17	Gorman has his right knee on David Smith's back,	17	THE WITNESS: -- concluded was involved.
18	doesn't it?	18	MR. BENNETT: Cause of death, not a
19	A. Well, it's been a while since I've seen the	19	contributing factor.
20	video and whether it's his right knee or his	20	MS. FUNDINGSLAND: Excuse me.
21	left knee... He puts himself in that position,	21	Who's --
22	using that technique of -- of kneeling on his	22	MR. BENNETT: Well, I mean --
23	shoulder or upper back.	23	MS. FUNDINGSLAND: -- testifying --
24	MR. BENNETT: (Sotto voce comment.)	24	MR. BENNETT: -- it's just bullshit.
25	BY MR. STORMS:	25	MS. FUNDINGSLAND: -- here?

19 (Pages 70 to 73)

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	74		76
1	MR. BENNETT: It's -- it's --	1	You'll give your final argument some day.
2	MS. FUNDINGSLAND: Well, why --	2	MR. BENNETT: You betcha, I will.
3	MR. BENNETT: -- ridiculous.	3	BY MR. STORMS:
4	MS. FUNDINGSLAND: -- don't you swear	4	Q. Now you talk about not being a doctor in terms
5	yourself in, Mr. Bennett, then? Okay?	5	of understanding the length of time, you know,
6	MR. BENNETT: These answers are --	6	there was kneeling on David Smith's back.
7	MS. FUNDINGSLAND: Well, --	7	Minneapolis police officers, along with all
8	MR. BENNETT: -- ridiculous.	8	other police officers, have been trained for a
9	MS. FUNDINGSLAND: -- I don't --	9	long period of time that you're not supposed to
10	MR. BENNETT: I'm tired of them.	10	continue to kneel on the backs of subjects for a
11	MS. FUNDINGSLAND: -- care if you don't	11	long period of time; isn't that right?
12	like the answers that you're getting.	12	A. Yes. We train officers to turn them over into
13	MR. BENNETT: Okay.	13	the recovery position as soon as practical.
14	MS. FUNDINGSLAND: Okay?	14	Q. And that was long before this case, wasn't it,
15	MR. BENNETT: Let's -- let's go on.	15	that that training has been provided?
16	MS. FUNDINGSLAND: Please.	16	A. Yes. I don't know for how long and in -- and in
17	MR. BENNETT: But that's --	17	what context, but certainly it's been part of
18	MS. FUNDINGSLAND: Mr. --	18	our maximal restraint policy for many years.
19	MR. BENNETT: -- that's just not true.	19	Q. And it's something that you would -- that you
20	MS. FUNDINGSLAND: Mr. Bennett, just let	20	train to do not only in maximal restraint, but
21	the person answer the question. Otherwise you	21	in any situation where you have a handcuffed
22	don't need to depose her at all. Okay? You can	22	individual in the prone position; isn't that
23	just get up there and testify.	23	right?
24	MR. BENNETT: Well, --	24	A. Yes. We encourage officers to turn them over as
25	MS. FUNDINGSLAND: So --	25	soon as practical onto their side.
	75		77
1	MR. BENNETT: -- I'd --	1	Q. Do you know if whether or not that was part of
2	MS. FUNDINGSLAND: -- either let her --	2	the grand jury presentation in terms of what
3	MR. BENNETT: -- testify to the truth.	3	officers have been trained on?
4	MS. FUNDINGSLAND: Either let her answer	4	A. I don't know what the county attorney's office
5	or don't.	5	presented at the grand jury.
6	MR. BENNETT: Okay. She's sworn to tell	6	The training records certainly were part of
7	the truth.	7	the case file, but I don't know whether that was
8	MR. STORMS: Well, --	8	presented.
9	MS. FUNDINGSLAND: Don't start with me.	9	Q. Do you know why your homicide investigators
10	MR. BENNETT: Start with her.	10	never asked Smith and -- or Gorman and Callahan
11	MS. FUNDINGSLAND: And don't do it.	11	why they did not put Smith on his side?
12	You keep that up and this deposition will be	12	A. No, I don't know why they didn't ask.
13	over.	13	Q. As you sit here today do you know why Callahan
14	MR. BENNETT: Yeah. It's over now.	14	and Gorman did not put Smith on his side?
15	MS. FUNDINGSLAND: Just because you	15	A. I know what they said in their statements.
16	don't like what she's saying --	16	That, you know, they were -- they were
17	MR. BENNETT: Oh, --	17	recovering from the struggle.
18	MS. FUNDINGSLAND: -- doesn't mean she --	18	That they were breathing heavily.
19	MR. BENNETT: -- I do like what she's	19	That they were feeling -- one of them was
20	saying. Don't get me wrong. Because it's as --	20	feeling light-headed.
21	MS. FUNDINGSLAND: Well, --	21	And at one point Officer Gorman went to look
22	MR. BENNETT: -- silly as anything I've	22	for the manager on duty from the Y. He wanted
23	ever heard.	23	to ascertain that they were going to be able to
24	MS. FUNDINGSLAND: -- just let her	24	get the medical people up in the elevator.
25	answer the questions.	25	So, you know, I know how they explained what

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1        their thoughts about why they did it.		1        Q. And to monitor their breathing and	
2        Q. If they were conducting a		2        consciousness?	
3        professionally-competent investigation should		3        A. Yes.	
4        they have asked that question?		4        Q. So would a professionally-competent	
5            MS. FUNDINGSLAND: I'm going to object		5        investigation have included asking Callahan and	
6        to the form of the question.		6        Gorman why they did nothing to check his	
7            THE WITNESS: I think that that's one		7        breathing or health status for a period of	
8        question that could have been asked.		8        6-1/2 minutes?	
9            I think they asked for the officers to		9        A. You know, the -- the suggestions that the	
10        describe what they did, their course of conduct		10       training and policy were violated would have	
11        during this incident.		11       been a good question for the force review, you	
12        MR. BENNETT: (Sotto voce comment.)		12       know, particularly focusing on those issues of	
13        BY MR. STORMS:		13       training and policy.	
14        Q. Is the answer yes or no?		14       The homicide investigation, you know, was	
15        A. Would you ask the question again? And I'll give		15       looking at the use of force itself and they were	
16        you the yes or no answer.		16       very focused on the incidents that led up to the	
17        MR. STORMS: Can you please read back my		17       use of force and the use of force itself and --	
18        question?		18       and not on the issues that occurred after the	
19            (The following was read back by the		19       use of force was completely finished.	
20        court reporter:		20       Q. Well, if an officer fails to follow policy and	
21        "Q. If they were conducting a professionally-		21       fails to comply with the guidelines of the	
22        competent investigation should they have asked		22       4th Amendment wouldn't that be relevant to the	
23        that question?"		23       question of whether or not a negligent homicide	
24        THE WITNESS: Yes, that's one question		24       had occurred, for example, or involuntary	
25        that could have been asked.		25       manslaughter?	
BY MR. STORMS:			
	83		85
1        Q. And if they were conducting a		1        A. Well, in this case I think that, you know,	
2        professionally-competent investigation they		2        there's clearly an effort made--they intended to	
3        should have asked why no one attended to Smith's		3        provide first aid. You know, there's no --	
4        breathing for a period of 6-1/2 minutes?		4        there's no evidence in the case that, you know,	
5        A. (Pausing.)		5        they willfully deprived him of, you know,	
6        Q. Yes?		6        medical attention once they realized he was in	
7        A. The officers provided first aid. It's clear		7        distress.	
8        from watching the video the officers provided		8        Q. Well, if I -- I can't commit involuntary	
9        first aid. When they realized that David Smith		9        manslaughter? I can't accidentally or	
10        was in distress they provided first aid.		10       negligently kill someone and then provide them	
11        Q. Are you aware of the fact that they did not		11       with CPR, but still be criminally liable for	
12        check either his breathing or pulse for a period		12       negligent homicide? Is that what you're telling	
13        of 6-1/2 minutes after handcuffs were applied?		13       me?	
14        A. I hadn't measured the length of time, but yes, I		14       A. I suppose.	
15        knew that there was a time period where they --		15       I haven't seen a case like that charged out.	
16        they didn't check his breathing or pulse, they		16       Q. Do you need intent for negligent homicide?	
17        didn't realize he was in distress and so they		17       A. No.	
18        didn't start first aid yet.		18       Q. Okay. So the question of intent is really kind	
19        Q. Under the training that's been provided by the		19       of irrelevant as to whether or not a negligent	
20        Minneapolis Police Department is that an		20       homicide occurred in this case; right?	
21        acceptable period of time to maintain someone in		21       A. Yes.	
22        a prone position without checking either their		22       Q. Okay. I mean kneeling on Smith's back by Gorman	
23        breathing or consciousness?		23       and sitting on his buttocks by Callahan, that	
24        A. No. We train officers to turn them over into		24       was a use of force, wasn't it?	
25        the recovery position as soon as practical.		25       A. It was -- it was not a use of force in terms of	

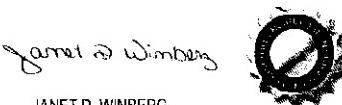
22 (Pages 82 to 85)

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1      the use of force like a takedown technique. 2      They were restraining him, yes. 3      Q. Well, all right. 4            (Sotto voce conversation.) 5      BY MR. STORMS: 6      Q. Are you aware of the fact that restraining 7            someone is -- falls within the definition of 8            force under MPD policy? 9      A. Yes. But I'm clarifying that -- that the use 10       of -- the use of force in this case involved a 11       number of different aspects. 12       They were restraining him at that point, but 13       there wasn't a use of force at that point. Like 14       the Taser use of force had already occurred. 15       There was no additional, you know, arm bar 16       techniques. There were no pressure point 17       techniques that were being applied. 18       Q. Well, they struck him in the head while he was 19       in prone position, didn't they? 20       A. Yes. 21       Q. Are you supposed to hit handcuffed individuals 22       in the head? 23       A. They were cuffing him in the head with an open 24       hand to discourage him from continuing to 25       resist.		1      until they die of mechanical asphyxia? 2            MS. FUNDINGSLAND: Object to the form of 3            the question. 4            THE WITNESS: Yes. 5            MR. STORMS: Okay. 6      BY MR. STORMS: 7      Q. And similarly officers have an obligation under 8            the 4th Amendment when they -- when they arrest 9            someone or otherwise maintain someone in 10          custody, they have an obligation to ensure that 11          that person remains in good health? 12          A. Yes. 13          Q. Continues to breathe? 14          A. Yes. 15          Q. And so officers have an obligation under the 16            4th Amendment to, for example, continue to -- to 17            continue monitoring the breathing of a suspect 18            that they've arrested? 19          A. Yes. 20          Q. That didn't happen in this case? 21          A. No. There was a significant gap of time in 22            which that did not happen. 23          Q. Okay. So wouldn't having answers to those 24            questions inform any kind of legitimate inquiry 25            as to whether or not a negligent homicide	
	87		89
1      Q. And that's appropriate? 2      A. They were exonerated in the use-of-force review. 3      Q. You don't know what information was presented at 4            the use-of-force review? You weren't there; 5            right? 6      A. No, I haven't seen the use-of-force review. 7      Q. So back to my point. 8            Kneeling on his back and sitting on his 9            buttocks, those are uses of force, aren't they? 10     A. Yes. 11     Q. And they're governed by the 4th Amendment; 12            right? 13     A. Yes. 14     Q. Okay. Now continuing to kneel on someone's back 15            until they mechanically asphyxiate, that's not 16            proper police training, is it? 17     A. No. 18            MS. FUNDINGSLAND: Object to the form of 19            the question. 20     BY MR. STORMS: 21     Q. And that wouldn't fall within proper conduct 22            under the 4th Amendment either, would it? 23     A. No. We certainly don't train people... 24     Q. And the 4th Amendment certainly doesn't allow 25            for police officers to kneel on someone's back		1      occurred in this case? 2      A. Well, -- 3            MS. FUNDINGSLAND: Objection, asked and 4            answered. 5            THE WITNESS: The -- the witness 6            statements, the videos, all of them that are 7            available, clearly show the time period. They 8            show the events that occurred. 9            BY MR. STORMS: 10      Q. And they show that they kneeled on his back for 11            4-1/2 minutes? 12      A. Yes. 13      Q. Not good; right? 14      A. No. Not good. 15      Q. Right. 16      A. There was no question -- there was no question 17            that that had happened. 18      Q. Okay. And so why would that be okay then? Why 19            would that not be a policy violation? You -- 20            you seem to have informed me that that's against 21            training, it's against policy, it's against what 22            officers know. 23            So aside from a policy violation why 24            wouldn't that be a negligent homicide? 25      A. Well, that's certainly something that the	

23 (Pages 86 to 89)

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1	grand jury could have considered. Obviously I	1	monitor the health and welfare of subjects,
2	wasn't present at the grand jury. But the	2	that's meant to fulfill the officer's
3	grand jury reviewed this case and determined	3	requirements under the 4th Amendment, isn't it?
4	that no charges were appropriate. And the only	4	A. Yes.
5	one who can answer the question about why is the	5	Q. And the same is true for the standards and
6	grand jury.	6	policies and practices with respect to removing
7	Q. Do you consider this to be a negligent homicide?	7	subjects from a prone position into a recovery
8	A. Um... Um...I do not consider this to be a	8	position?
9	negligent homicide because it's been reviewed by	9	A. Yes.
10	the authority to determine that --	10	MR. STORMS: I have no further
11	Q. I don't care --	11	questions.
12	A. -- and determined not to be a negligent	12	MS. FUNDINGSLAND: We'll read and sign.
13	homicide.	13	VIDEOGRAPHER: This concludes the video
14	Q. I don't care about the review. I want to know	14	deposition.
15	based upon all your training and all your	15	It is 10:37 A.M.
16	education, your work as a police officer,	16	(Concluded at 10:37 A.M.)
17	whether or not you consider this to be a	17	* * *
18	negligent homicide.	18	
19	MR. BENNETT: (Sotto voce comment.)	19	
20	THE WITNESS: I think that, as you have	20	
21	pointed out, there were clearly issues in this	21	
22	case where the way we train officers to monitor	22	
23	someone's medical condition and breathing, those	23	
24	training standards were not upheld.	24	
25	I do not believe it rises to the level of	25	
	91		93
1	negligent homicide.	1	STATE OF MINNESOTA . )
2	It's not that they made no effort. They	2	: ss CERTIFICATE
3	clearly did not make no effort to be cognizant	3	COUNTY OF WASHINGTON )
4	of David Smith's medical condition. There was a	4	I, Janet D. Winberg, hereby certify
5	significant gap. There was a gap that was too	5	that I reported the videotaped deposition of
6	long, but I do not believe that they -- that	6	AMELIA HUFFMAN, on the 31st day of July, 2012,
7	they were completely negligent of Mr. Smith's	7	in Minneapolis, Minnesota, and that the witness
8	welfare.	8	was, by me, first duly sworn to tell the truth;
9	BY MR. STORMS:	9	That the testimony was transcribed by me and is
10	Q. You believe it was a belated effort?	10	a true record of the testimony of the witness;
11	A. Yes, I do.	11	That I am not a relative, or employee, or
12	Q. And you believe that their conduct and the	12	attorney, or counsel of any of the parties; or a
13	efforts they made were contrary to the police	13	relative or employee of such attorney or
14	standards, practices and policies as you	14	counsel;
15	understand them?	15	That I am not financially interested in the
16	A. Yes, I do.	16	action and have no contract with the parties,
17	MR. STORMS: Can we go off the record?	17	attorneys or persons with an interest in the
18	VIDEOGRAPHER: Off the video record at	18	action that affects or has a substantial
19	10:28 A.M.	19	tendency to affect my impartiality;
20	(Recess taken.)	20	That the right to read and sign the transcript
21	VIDEOGRAPHER: This is Disc 2.	21	by the witness was reserved.
22	We are on the record at 10:36 A.M.	22	WITNESS MY HAND AND SEAL THIS 3rd day of August,
23	BY MR. STORMS:	23	2012.
24	Q. The training standards and policies and	24	
25	practices regarding -- or requiring officers to	25	JANET D. WINBERG Registered Professional Reporter Notary Public Washington County, Minnesota.

24 (Pages 90 to 93)

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952-943-1587

Amelia Huffman  
7/31/2012

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1	STATE OF MINNESOTA ) SS CERTIFICATE	
2	COUNTY OF WASHINGTON)	
3	I, AMELIA HUFFMAN, certify that I have read	
4	and examined the typewritten transcript of the	
5	deposition taken of me in the matter of Larry E.	
6	Smith, et al., vs. Timothy Gorman, et al., on	
7	July 31, 2012, consisting of the preceding	
8	pages, and find the same to be true and correct	
9	(Except as follows):	
10	Page	Line Correction      Reason for Change
11	_____	
12	_____	
13	_____	
14	_____	
15	_____	
16	_____	
17	_____	
18	_____	
19	_____	
20	_____	
21	_____	
22	Dated this _____ day of _____	
23	_____ AMELIA HUFFMAN	
24	Reporter: JDW	
	95	
1	EXAMINATION INDEX	
2	By Mr. Storms: 3 - 92 _____	
3	OBJECTION INDEX	
4	Ms. Fundingsland: 42, 51, 53, 54, 55, 58, 59, 62, 65, 5 73, 79, 80, 82, 87, 88, 89 6 _____	
7	EXHIBIT INDEX	
8	Exhibit 92: 7-800 Tactical Response marked/identified/reviewed.....30	
9	_____	
10	_____	
11	_____	
12	_____	
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